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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 149.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, AND CHARLES D. BARRY, TRADING AS COPARTNERS UNDER THE FIRM NAME AND STYLE OF HENRY W. PEABODY & CO., PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 23, 1903.

(19142.)

(19142.)

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1 United States District Court, Southern District of New York.

FREDERICK W. LINCOLN ET AL., Trading as Henry W. Peabody & Co., Plaintiff- in Error,
against
THE UNITED STATES, Defendant in Error.

Statement.

1902.
Mc'h 19. Petition filed
May 16. Answer filed
Sep. 16. Demurrer to answer filed
1903.
Nov. 17. Demurrer overruled
" 18. Opinion, Adams, J., overruling demurrer.
" 18. Order for judgment filed
" 18. Judgment entered
" 19. Petition for writ of error filed
" 19. Writ of error allowed.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the district court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, or some of you between Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, and the United States, a manifest error hath happened, to the great damage of the said Henry W. Peabody and Company, petitioners, as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid, on or before the 30th day of November, 1903, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 19th day of November,
3 in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one hundred and twenty-eighth.

{ Seal District Court of the United States, Southern District New York. }

THOS. ALEXANDER,
Clerk of the District Court of the United States for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

GEO. B. ADAMS,
United States District Judge.

4 [Endorsed:] United States Supreme Court, October term, 1903. Frederic W. Lincoln, and others, trading as copartners under the firm name and style of Henry W. Peabody and Company, plaintiffs in error, against The United States, defendant in error. Writ of error. Henry M. Ward attorney for plaintiffs in error, office and post office address No. 32 Nassau street borough of Manhattan city of New York Copy of the within paper has been this day received at this office Nov. 19 1903 Henry L. Burnett, U. S. attorney. S. Filed Nov'r 19 1903.

5 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Thomas Alexander, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 21st day of November in the year of our Lord one thousand nine hundred and three, and of the Independence of the said United States the one hundred and twenty-eighth.

[Seal District Court of the United States, Southern District of N. Y.]

THOS. ALEXANDER, *Clerk.*

6 In the District Court of the United States for the Southern District of New York.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. Bradlee, Charles D. Barry, Trading as Copartners under the Firm Name and Style of Henry W. Peabody & Company, Petitioners,

against

THE UNITED STATES, Defendant.

No. —.

Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody & Company, the petitioners above named, by Henry M. Ward, their attorney, for their petition against The United States, the defendant above named, respectfully show to the court and allege as follows:

First. That at all the times hereinafter mentioned your petitioners were and they now are trading and doing business in the city of New York, State of New York, and the city of Boston, State of Massachusetts, as copartners under the firm name and style of Henry W. Peabody & Company. That your petitioner Frederic W. Lincoln is a citizen of the State of New York, a resident of the city of New York, and an inhabitant of the southern district of New York. That your petitioner Henry W. Peabody is a citizen of the State and inhabitant of the district of Massachusetts. That your petitioner John R. Bradlee and Charles D. Barry are citizens of the State and inhabitants of the district of New Jersey.

Second. That on the 10th day of December, 1898, a treaty of peace between the United States of America and the Kingdom of
7 Spain was concluded and signed by their respective plenipotentiaries at Paris, in the French Republic. Said treaty was ratified by the Senate and by the President of the United States on the 6th day of February, 1899, and by Her Majesty the Queen Regent of Spain on the 19th day of March, 1899, and ratifications thereof were exchanged in the city of Washington, in the District of Columbia, on the 11th day of April, 1899, and on the same day the said treaty was proclaimed by the President of the United States.

Third. That at the date of the ratification of the said treaty, the military and naval forces of the United States had seized, occupied and were in possession of the town and port of Manila, in the island of Luzon. That under and pursuant to the terms of said treaty, the said island of Luzon, being a part of the archipelago known as the Philippine islands, was ceded by Spain to the United States and the rightful possession thereof recognized, and such cession was accepted by the United States. That by said treaty Spain promised and agreed that it would evacuate the territory so ceded by it, which it thereupon proceeded to do. That at all times thereafter said island of Luzon, and particularly the said town and port of Manila

in said island, have remained in the complete possession of the United States without interference by Spain or by any other power, and the United States has, since the date of the ratification of said treaty, exercised full administrative and legislative authority over said town and port of Manila.

Fourth. That prior to the date of the signing of the said treaty of peace, the President of the United States made and issued a certain executive order, dated at the executive mansion in the city of Washington, July 12th, 1898, and published by the Secretary of War by order of the President, on the 13th day of July, 1898. The
8 said order provided in substance that upon the occupation and possession of any ports and places in the Philippine islands by the forces of the United States, duties and taxes should be levied and collected upon articles imported into the Philippine islands from other countries, and upon articles exported from the Philippine islands to other countries at the rates and in the manner and subject to the regulations set forth and established by the customs tariff and regulations for the Philippine islands thereunto annexed.

Thereafter, by order of the Secretary of War, dated at the War Department, Washington, October 13th, 1898, and known as "Tariff Circular No. 18," it was ordered that the operation of said order of the President of July 12, 1898, establishing a customs tariff and regulations for ports in the Philippine islands should be suspended until the 10th day of November, 1898, when the same should take effect and be in force, and that until that time the Spanish tariff as theretofore in force should be in force and duties collected thereunder. That in accordance with the last-named order on and after November 10th, 1898, the said tariff and regulations were put in force at the various ports of entry in the Philippine islands, and more particularly at the said port of Manila, in the island of Luzon. That the said customs tariff and regulations so established by the said order of the President, of July 12th, 1898, as modified by certain amendments thereof made by order of the President from time to time, remained in force at all the ports of entry in the Philippine islands, and more particularly at the said port of Manila from on or about the 15th day of November, 1898, until on or about the 15th day of November, 1901. That during all of that period import duties were collected under the alleged authority of said orders and of said tariff by the military authorities of the United States upon articles imported and brought into the several
9 ports of entry in the Philippine islands from the ports in the several States and Territories of the United States, as well as from ports in foreign countries.

Fifth. That said customs tariff and regulations for the Philippine islands provided, among other things, that every vessel on its arrival should be placed under military guard until duly discharged, and that no merchandise should be delivered until after the payment of the proper duties and charges thereon, when an order for the delivery of the merchandise should be issued by the

proper military officer, and that any objection to the assessment of the duties must be filed by the importer before payment by him of the same, and that no refund of duties would be made thereafter, and that no delivery of imported merchandise should be made to the importer unless he had duly paid in cash the duties assessed thereon, and that any goods, wares or merchandise, not duly entered for payment of duty within ninety days after importation should be sold at auction by order of the commanding officer, and that the proceeds of such sale should be retained for ten days subject to the demand of the importer, after deduction of the proper duties on the goods and all expense of storage and sale; and that all seized and confiscated goods should be sold in like manner.

The said tariff set forth the rates of duties on imports in certain schedules annexed thereto, and these petitioners beg leave to refer to the said customs tariff and regulations as established by the said orders of the President and to the amendments thereof, and to make the same a part of this petition as fully to all intents and purposes as if herein set forth at large.

10 *Sixth.* That during the said period from November 10th, 1898, until November 15th, 1901, certain officers of the United States Army were designated under orders of the President to act, and did act as collectors of customs at the several ports in the Philippine islands, and particularly at the said port of Manila, and enforced the said tariff and regulations and collected duties thereunder at the rates thereby provided upon articles imported and brought into the ports in the Philippine islands, and more particularly the port of Manila from ports in the several States of the United States, at the same rates and in the same manner as upon articles imported from ports in foreign countries.

Seventh. That at all the times herein referred to your petitioners were and they now are engaged in a general commission and mercantile business between the ports of New York in the State of New York, and the said port of Manila, in the island of Luzon, having agents and correspondents in the said port of Manila, and in other ports in other countries and having offices for the transaction of their business in the city of New York, in the State of New York, and in the city of Boston, in the State of Massachusetts, and in the course of such business your petitioners have shipped certain articles, the growth, produce or manufacture of certain of the States of the United States, to their agents and correspondents in the said port of Manila, and during the same period your petitioners have also imported large quantities of articles, the growth or produce of the Philippine islands, into the said port of New York.

Eighth. That in the course of their business as aforesaid, your petitioners, in or about the month of October, 1900, shipped from the said port of New York, in the State of New York, certain articles the manufacture of certain of the States, to-wit certain iron ware and samples by the vessel "Polarstjernen," consigned to your

11 petitioners' agents at the port of Manila. That said vessel made a continuous voyage from the port of New York to the port of

Manila, and arrived at the latter port on or about the 22nd day of November, 1900. That upon the arrival of said vessel at said port of Manila, the military officer of the United States then acting as collector of customs for the port of Manila took the aforesaid merchandise into his custody and placed the same under military guard in the manner established by the said customs regulations, and proceeded to assess and levy duties thereon at the rates set forth in said customs tariff, amounting to two hundred and fifty-three dollars and twelve cents ($253.12), Mexican silver, and thereupon demanded payment of the amount of said duties from your petitioners' agents, and threatened in the event of default in the payment thereof to seize said merchandise with the military forces at his command and to sell the same for the payment of such duties, as provided in said customs regulations. That thereupon your petitioners' agents, in order to obtain possession of the said articles so consigned to them by your petitioners, and in order to be able to carry on your petitioners' business as aforesaid, were obliged to pay and did pay to said military officer acting as such collector, but under duress and by compulsion of such threat, the amount of duties so assessed by him, and upon such payment said articles were by the said collector released and delivered to your petitioners' agents.

Ninth. That on various other occasions between October, 1900, and January, 1901, your petitioners have in like manner shipped and consigned other articles of merchandise, the growth, produce and manufacture of certain of the States of the United States, from said port of New York to their agents in the said port of Manila, upon vessels
12 making continuous voyages from said port of New York to the said port of Manila, and upon the arrival of such vessels at the latter port the said articles of merchandise have been taken into the custody of the military officer acting as collector of customs, and duties have been in like manner assessed thereon and paid by your petitioners' agents, but under duress and by compulsion, in order to enable your petitioners' business to be carried on, as set forth in the preceding paragraph.

And your petitioners file herewith and marked "Exhibit A," a schedule showing such payments of duties exacted from your petitioners as aforesaid at the port of Manila, with the names of the vessels bearing said merchandise, the date of arrival thereof at the port of Manila, the port of shipment, the nature of the articles, the dates of payment, the amount of duties so paid, with the items of duties so paid, amounting to one thousand four hundred and twenty-six dollars and ninety-seven cents ($1,426.97), Mexican silver, equalling seven hundred and thirteen dollars and forty-eight cents ($713.48) in gold coin of the United States.

Tenth. That after collecting the amounts of duties so assessed and levied upon the articles so shipped by your petitioners to Manila as aforesaid, the said military officer acting as collector of customs paid the same over to the United States, and said amounts of money are now in the possession of the United States.

Eleventh. That as your petitioners are advised by counsel, the proper construction of the said order of the President of July 12th, 1898, and of the customs tariff and regulations thereby established, as amended from time to time, is that they ceased to apply to all articles imported and brought into the several ports of the Philippine islands, and more particularly the said port of Manila from ports in the several States
13 of the United States, at the moment the United States ceased to be a foreign country with respect to the Philippine islands: that is to say, on or prior to the 11th day of April, 1899, and that all articles so shipped by your petitioners to their agents at the port of Manila, as specified in the annexed schedule, were not subject to any import duties, and were entitled to free entry into the said port of Manila.

Twelfth. That as your petitioners are advised by counsel, the imposition and collection of said duties upon the articles aforesaid, in the manner aforesaid, and in the amounts set forth in the annexed schedule, or in any amount, were in violation of the rights and privileges secured to your petitioners under and by virtue of the provisions of the Constitution and laws of the United States and the said treaty of peace between the United States and Spain. And your petitioners claim that they are entitled to recover said moneys from the United States, and base their claim thereto upon the United States Constitution, the laws of the United States and said treaty with Spain.

Thirteenth. That no part of the moneys so exacted from your petitioners as aforesaid has ever been paid to them, or any of them, by the United States, although payment thereof has been demanded. And by reason *the* the facts aforesaid, the sum of seven hundred and thirteen dollars and forty-eight cents ($713.48) in gold coin of the United States, the equivalent of the amount so exacted from your petitioners and paid to the military officer acting as collector of customs at Manila as aforesaid, is now due to and owing your petitioners from the United States.
14 Wherefore, your petitioners demand judgment against the United States for the sum of seven hundred and thirteen dollars and forty-eight cents ($713.48), gold coin of the United States, with interest thereon from the 22nd day of November, 1900, and the costs of this action.

March 27th, 1902.

HENY M. WARD,
Attorney for Petitioners, # 30 *Broad Street,*
New York City.

15 SOUTHERN DISTRICT OF NEW YORK, } ss:
State of New York, County of New York, }

Charles D. Barry, being duly sworn, deposes and says that he is one of the petitioners herein. That he has read the foregoing petition and that the same is true to the best of his knowledge, information and belief. The sources of information and grounds of

his belief are an examination of the records in the petitioners' New York office and certified statements furnished to him by the petitioners' agents and correspondents in the port of Manila. No assignment or transfer of said claim, or any part thereof, has been made, and deponent believes that the petitioners are rightfully and justly entitled to the full amount named and stated in the said petition, after allowing all just credits and set-offs, if any.

CHAS. D. BARRY.

Subscribed and sworn to before me this 27th day of March, 1902.

CHAS. A. CONLON,

[NOTARIAL SEAL] *Notary Public, New York County.*

15½ [Endorsed:] U. S. district court, southern district of New York. Frederic W. Lincoln and others, trading as co-partners under the firm name and style of Henry W. Peabody & Company, petitioners, *vs.* The United States. (Copy.) Petition. Henry M. Ward attorney for petitioners, # 30 Broad street, New York city. U. S. district court, S. D. of N. Y. Filed Mar. 29, 1902.

16 United States District Court, Southern District of New York.

FREDERICK W. LINCOLN and Others, Trading as Co-partners under the Firm Name and Style of H. W. Peabody & Company, Petitioners,

vs.

THE UNITED STATES.

Answer to Petiton.

The United States of America, the defendant above named, by Henry L. Burnett, its attorney for the southern district of New York, in answer to the petition herein, respectfully shows to the court:

First. That at the times and dates of the importations of merchandise by the petitioners from the United States into the Philippine islands, mentioned and set forth in the eighth and ninth allegations of said petition respectively, to wit, between October, 1890, and January, 1901, there existed an armed insurrection in said Philippine islands of such magnitude and extent as to require military operations and control by the military forces of the United States for its suppression and having for its object the expulsion of the sovereignty of the United States from said islands, whereby the territory of said islands was rendered hostile, and trade with said hostile territory was unlawful except by the permission of the commander of the belligerent force then conducting military operations in said hostile territory, and under such regulations and conditions as were then imposed and in force by the military authorities of the United States.

Second. And defendant, referring to the third allegation of
17 said petition, avers that while it is true that the town and port of Manila in said islands was in the actual, possession of the United States, at the times therein mentioned, yet said possession was challenged and interfered with by hostile insurrectionary military forces, and was held by the United States only by force of arms and military occupation and government, as a part of a hostile territory, and defendant therefore denies that the same was in the peaceable possession of the United States, at the times mentioned in said petition.

Third. That after February 4, 1898, when said hostilities against the United States in said islands were inaugurated, all articles of merchandise, including those of the petitioners, shipped to and entered in any port in the said islands, including Manila, then territory hostile to the United States, were under the laws and usages of war, and the Constitution and laws of the United States and under the orders and regulations of the military commander of the forces of the United States set forth in the fourth allegation of said petition liable to the payment of the several sums of money mentioned and set forth in said petition, as duties, and payable to the military officer of the United States, then acting as collector of customs for the port of Manila, not only under said laws, usages, orders and regulations, but also as a condition imposed upon the privilege of trading with hostile territory.

Fourth. That the customs duties exacted by the military government of the Philippines, at said times mentioned in said petition, were properly enforced by an exercise of the belligerent rights of the United States, arising from the conditions then existing in said islands, then a hostile territory.

18 Fifth. That the right of the President of the United States, through his officers and agents to exact duties upon merchandise imported into the Philippine islands, at the times mentioned in said petition, and to regulate commercial intercourse with said islands, was lawful and justifiable as an exercise of the war powers of the United States in territory affected by an armed insurrection, and in a condition of violent and serious hostility against its sovereignty. That the right to exercise the war powers of the nation does not depend upon the question as to whether or not the territory is foreign, but whether or not the territory is hostile. That the President of the United States was authorized to determine the question as to whether or not the conditions existing at the times of petitioner's importations in the Philippine islands rendered that territory hostile, and his determination thereof was and is binding upon the courts.

Sixth. And the defendant further answering avers that this court has no jurisdiction of the subject matter of this action.

Seventh. And further answering, the defendant avers, that the petition herein does not state facts, sufficient to constitute a cause of action against the United States.

Wherefore this defendant prays judgment that the petition of the petitioner herein be dismissed with costs.

Dated May 26, 1902.

HENRY L. BURNETT,
United States Attorney for the Southern District of New York.

Room 50, P. O. building, New York city.

18½ [Endorsed:] United States district court, southern district of New York. Frederick W. Lincoln *et al. vs.* The United States. Answer to petition. Henry L. Burnett, United States attorney, attorney for defendant. U. S. district court, S. D. of N. Y. Filed May 26, 1902. Henry M. Ward, counsel, 32 Nassau street, New York.

19 United States District Court, Southern District of New York.

FREDERICK W. LINCOLN and Others, Trading as Copartners under the Firm Name and Style of H. W. Peabody & Company, Petitioners,

against

THE UNITED STATES.

The petitioners above named by Henry M. Ward, their attorney, demur to the answer of The United States, the defendant herein:

First. Upon the ground that it is insufficient in law upon the face thereof.

HENRY M. WARD,
Attorney for Petitioners, 32 Nassau Street, Borough of Manhattan, City of New York.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

New York, September 25, 1902.

FREDERICK R. COUDERT, JR.,
Of Counsel for Petitioners.

STATE OF NEW YORK, }
County of New York, Southern District of New York, } *ss.*

Charles D. Barry, being duly sworn deposes and says I am one of the herein named plaintiffs. The foregoing demurrer is not interposed for delay.

CHAS. D. BARRY.

Sworn to before me this 25th day of September, 1902.

[NOTARIAL SEAL.]

CHAS. A. CONLON,
Notary Public, New York Co.

19½ [Endorsed:] United States district court, southern district of New York. Frederick W. Lincoln, and others, trading as copartners under the firm name and style of H. W. Peabody & Company, petitioners, *vs.* The United States. Petitioners' demurrer to answer. Henry M. Ward attorney for petitioners. Office and post office address No. 32 Nassau street borough of Manhattan city of New York U. S. district court S. D. of N. Y. Filed Sept. 6, 1902 11 17 1903 Demurrer overuled G. B. A.

20 In the District Court of the United States for the Southern District of New York.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, and Charles D. Barry, Trading as Copartners under the Firm Name and Style of Henry W. Peabody and Company, Petitioners,
against
THE UNITED STATES.

Opinion of the Court.

This cause coming on to be heard upon the petitioners' demurrer to the answer interposed in behalf of the United States, and due deliberation having been had thereon, the court now finds and concludes that this court has jurisdiction of the subject matter of the claim set forth in the petition and that the petition sets forth facts sufficient to constitute a cause of action against the United States, under the authority of *Dooley v. United States*, 182 U. S. 222, and the court further finds and concludes that the facts set forth in the answer are sufficient in law as a defense to the petitioners' cause of action. The petitioners' demurrer to the answer should therefore be overruled with costs and the petitioners' counsel having stated in open court that they did not dispute the facts pleaded in the answer and elected to stand on their demurrer, the court further concludes that the petition should be dismissed on the merits, with costs, and that the United States should have judgment accordingly.

Dated, November 18, 1903.

GEO. B. ADAMS,
United States District Judge.

20½ [Endorsed:] United States district court, southern district of New York. Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners, against The United States. Opinion of the court. Henry L. Burnett, United States attorney, attorney for defendant.

21 In the District Court of the United States for the Southern District of New York.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, and Charles D. Barry, Trading as Copartners under the Firm Name and Style of Henry W. Peabody and Company, Petitioners,
against
THE UNITED STATES.

Order for Judgment.

This cause coming on for a hearing upon the petition filed herein on the 29th day of March, 1902, and the answer of the United States filed herein on the 26th day of May, 1902, and the petitioners' demurrer to the sufficiency of the answer, filed herein on the 25th day of September, 1902, and the court having filed its opinion this day, now, after hearing Henry C. Platt, Esq., of counsel for the United States, in support of the answer, and Paul Fuller, Esq., and Frederic R. Coudert, Jr., Esq., of counsel for the petitioners, in support of the demurrer, it is now, on motion of Henry L. Burnett, Esq., United States attorney,

Ordered, that said demurrer be and it is hereby overruled, with costs, and the petitioners having elected to stand on the demurrer, it is further

Ordered, that the United States have judgment against the petitioners, dismissing the petition on the merits, with costs to be taxed by the clerk.

Dated, November 18, 1903.

(S'd) GEO. B. ADAMS,
United States District Judge.

21½ [Endorsed:] United States district court, southern district of New York. Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners, against The United States. Order for judgment. Henry L. Burnett, United States attorney, attorney for defendant. Filed Nov'r 18, 1903

22 United States District Court, Southern District of New York.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, and CHARLES D. BARRY, Trading as Copartners under the Firm Name and Style of Henry W. Peabody and Company, Petitioners,
against
THE UNITED STATES.

Judgment.

This cause having been brought on for argument before the Honorable George B. Adams, district judge, at a stated term of this court, and the petitioners having appeared by Henry M. Ward, Esq., their attorney, and the United States by Henry L. Burnett, Esq., United States attorney, and argument having been had upon petitioners' demurrer to the answer, and the court having made and filed its opinion thereon and therewith its order dated November 18, 1903, overruling said demurrer and dismissing the petition on the merits, and the costs of the United States having been adjusted at the sum of fifteen and 90/100 dollars,

Now, on motion of Henry L. Burnett, Esq., United States attorney, it is

Ordered, adjudged and decreed that the petition be and it is hereby dismissed upon the merits, and that the United States recover of the petitioners the said sum of fifteen and 90/100 dollars costs, and have execution therefor.

Dated, November 18th 1903.

THOS. ALEXANDER,
Clerk of the United States District Court for the Southern District of New York.

22½ [Endorsed:] United States district court, southern district of New York. Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee, and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners, against The United States. Judgment. Henry L. Burnett, United States attorney, attorney for defendant. Filed Nov'r 18, 1903 at 2 p. m. & docketed judgment.

23 In the District Court of the United States for the Southern District of New York.

FREDERIC W. LINCOLN, HENRY W. PEABODY, John R. Bradlee, and Charles D. Barry, Trading as Copartners under the Firm Name and Style of Henry W. Peabody and Company, Petitioners,
against
THE UNITED STATES.
} Petition for Writ of Error.

Now come Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners herein, and conceiving themselves aggrieved by the judgment entered herein on the 18th day of November, 1903, do hereby pray that a writ of error be allowed from the said judgment, returnable to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States, and they present herewith their assignment of errors.

November 19th, 1903.

HENRY M. WARD,
Attorney for Petitioners, 32 Nassau Street, Borough of Manhattan, New York City, New York.

PAUL FULLER, JR.,
F. R. COUDERT,
Counsel.

And now, to wit, on this 19th day of November, 1903, it is ordered that the writ of error be allowed as prayed for.

GEO. B. ADAMS,
United States District Judge.

23½ [Endorsed:] United States district court, southern district of New York. Frederic W. Lincoln, and others, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners, against The United States. Petition for writ of error. Henry M. Ward attorney for petitioners, office and post office address No. 32 Nassau street borough of Manhattan city of New York. A copy of the within paper this day received at this office Nov'r 19, 1903. Filed Nov'r 19, 1903.

24 By the Honorable George B. Adams, one of the judges of the district court of the United States for the southern district of New York, in the second circuit, to Henry L. Burnett, Esq., United States attorney for the southern district of New York, attorney for the United States herein, and to the United States, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 30th day of November, 1903, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern district of New York, wherein Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody & Company, are plaintiffs in error, and The United States is defendant in error, to show cause, if any there by, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 19th day of November in the year of our Lord one thousand nine hundred and three and of the Independence of the United States the one hundred and twenty-eighth.

GEO. B. ADAMS,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

24½ [Endorsed:] United States Supreme Court, October term—1903, Frederic W. Lincoln, and others, trading as copartners under the firm name and style of Henry W. Peabody and Company, plaintiffs in error, against The United States, defendant in error. Citation. Henry M. Ward, attorney for plaintiffs in error, office and post office address No. 35 Nassau street borough of Manhattan city of New York A copy of the within paper this day received at this office Nov'r 19, 1903 Henry L. Burnett U. S. attorney Filed Nov'r 19, 1903

25 In the District Court of the United States for the Southern District of New York.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, and Charles D. Barry, Trading as Copartners under the Firm Name and Style of Henry W. Peabody and Company, Petitioners,
against
THE UNITED STATES.

Bond for Damages and Costs.

Know all men by these presents, that we, Lorenzo Semple and F. R. Coudert, Jr., are held and firmly bound unto the above named The United States, in the sum of two hundred and fifty dollars ($250.00), to be paid to the said The United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated the 19th day of November, in the year of our Lord one thousand nine hundred and three.

Whereas, the above named petitioners, Henry W. Peabody and Company, have sued out a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that if the above named Henry W. Peabody and Company shall prosecute their writ of error to effect, and answer all damages and costs if they
26 fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LORENZO SEMPLE. [L. S.]
FREDERIC R. COUDERT, JR. [L. S.]

Sealed and delivered and taken and acknowledged before me this 19th day of November, 1903.

[NOTARIAL SEAL.]

CHAS. A. CONLON,
Notary Public, New York Co.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Lorenzo Semple and F. R. Coudert, Jr., being duly and severally sworn, do depose and say each for himself that he is worth the sum of five hundred dollars ($500.) over and above all his just debts and liabilities.

LORENZO SEMPLE.
FREDERIC R. COUDERT, JR.

Sworn to before me this 19th day of November, 1903.

[NOTARIAL SEAL.] CHAS. A. CONLON,
Notary Public, New York Co.

The foregoing bond is hereby approved.

GEO. B. ADAMS,
U. S. District Judge.

Dated N. Y. Nov'r 19, 1903.

26½ [Endorsed:] United States district court, southern district of New York. Frederic W. Lincoln, and others, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners, against The United States. Bond for damages and costs on writ of error. Henry M. Ward attorney for petitioners, office and post office address No. 32 Nassau street borough of Manhattan city of New York Filed Nov'r 19, 1903.

27 Supreme Court of the United States, October Term, 1903.

FREDERIC W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, and CHARLES D. BARRY, Trading as Copartners under the Firm Name and style of Henry W. Peabody and Company, Plaintiffs in Error,
against
THE UNITED STATES, Defendant in Error.
} Assignment of Errors.

Now come Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee, and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody & Company, by their counsel, and respectfully represent that they feel aggrieved by the proceedings and judgment of the district court of the United States for the southern district of New York in the second judicial circuit in the above entitled cause, and assign errors thereto as follows:

1st. The court erred in holding that the imposition and collection of duties in the port of Manila under the order of the President of the United States as set forth in the petition was not in violation of the first section of the first article of the Constitution of the United States which declares that

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

2nd. The court erred in holding that the imposition and collection of said duties was not in violation of that portion of the seventh section of the first article of the Constitution, which declares that

"All bills for raising revenue shall originate in the House of Representatives."

28 3rd. The court erred in holding that the imposition and collection of said duties was not in violation of that portion

of the eighth section of the first article of the Constitution which declares that

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

4th. The court erred in holding that the imposition and collection of said duties was not in violation of that portion of the eighth section of the first article of the Constitution which declares that Congress shall have power

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

5th. The court erred in holding that the imposition and collection of said duties was not in violation of that portion of the ninth section of the first article of the Constitution which declares that

"No tax or duty shall be laid on articles exported from any State."

6th. The court erred in holding that the imposition and collection of said duties was not in violation of that portion of the third section of the fourth article of the Constitution which declares that

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

7th. The court erred in holding that the imposition and collection of said duties was not in violation of that portion of the fifth amendment of the Constitution which declares that

"No person * * * shall be deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."

29 8th. The court erred in holding that the imposition and collection of said duties was not in violation of the treaty of peace made between the United States and the Kingdom of Spain on the 10th day of December, 1898, known as "The treaty of Paris."

9th. The court erred in holding that at the time of the imposition and collection of the duties as stated in the petition the port of Manila was not a part of the United States.

10th. The court erred in holding that the President of the United States under the powers granted to him by the Constitution could lawfully impose and collect from the petitioners the amount of duties set forth in the petition.

11th. The court erred in not holding that the proper construction of the orders of the President under which the duties mentioned in the petition were collected is that they ceased to apply to goods imported from a port of a State into the port of Manila from and after the 11th day of April, 1899, and in not holding that upon the dates specified in the petition and schedule the petitioners' goods were entitled to free entry.

12th. The court erred in holding that the facts set forth in the

answer are sufficient in law as a defense to the petitioners' cause of action as set forth in the petition.

13th. The court erred in overruling petitioners' demurrer to the answer.

14th. The court erred in dismissing the petition.

15th. The court erred in not entering judgment for the petitioners for the amount claimed in the petition.

Wherefore, the said Frederic W. Lincoln, Henry W. Peabody,
30 John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, plaintiffs in error, pray this honorable court to examine and correct the errors assigned and for a reversal of the judgment of the district court of the United States for the southern district of New York, in the above entitled cause.

HENRY M. WARD,
Attorney for Plaintiffs in Error, 32 Nassau Street, Borough of Manhattan, New York City, New York.

PAUL FULLER,
F. R. COUDERT, JR.,
Counsel.

31 [Endorsed:] United States Supreme Court, October term, 1903. Frederic W. Lincoln and others, trading as copartners under the firm name and style of Henry W. Peabody and Company, plaintiffs in error, against The United States, defendant in error. Assignment of errors. Henry M. Ward, attorney for plaintiffs in error, office and post office address No. 32 Nassau street, borough of Manhattan, city of New York. A copy of the within paper this day received at this o ce. Nov'r 19, 1903. Henry L. Burnett, U. S. attorney. Filed Nov'r 19, 1903.

32 [Endorsed:] 4–112. U. S. district court, southern district of New York. Frederic W. Lincoln, Henry Peabody, John R. Bradlee, and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody and Company, petitioners, against The United States. Return on writ of error.

Endorsed on cover: File No. 19,142. S. New York D. C. U. S. Term No. 491. Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee, and Charles D. Barry, trading as copartners under the firm name & style of Henry W. Peabody & Co., plaintiffs in error, vs. The United States. Filed November 23rd, 1903. File No. 19,142.

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